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ELECTION COMMISSION, INDIA

NOTIFICATIONS

New Delhi, the 26th June 1953

**S.R.O. 1344.**—Whereas the election of Thakur Gurdatt, as a member of the Legislative Assembly of the State of Punjab, from the Palwal constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Chowdhary Sumer Singh, B.A., LL.B., Advocate, Village Dayalpur, Tehsil Ballabgarh, District Gurgaon;

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNALS, JULLUNDUR.

ELECTION PETITION No. 89 OF 1952.

Ch. Sumer Singh, B.A., LL.B., Advocate, village Dayalpur, Tehsil Ballabgarh, District Gurgaon—*Petitioner.*

*Versus*

1. Thakur Gurdatt (*alias* Gurdatt Singh), s/o Lajja Ram, Rajput, village Kaurali, P.O. Tigaon, Tehsil Ballabgarh, District Gurgaon (the returned candidate)—*Respondent No. 1.*
2. Ch. Jitu, s/o Giasi, village Bhalwana, P.O. Hodal, Tehsil Palwal, District Gurgaon—*Respondent No. 2.*
3. Ch. Parmeshwari, s/o L. Sarup Chand, Palwal Town, District Gurgaon—*Respondent No. 3.*
4. Ch. Nathu Singh s/o Badam Singh Jat, village Sihl, P.O. Ballabgarh, District Gurgaon—*Respondent No. 4.*
5. Ch. Ram Saran, s/o Chhaju, village Bhurja, P.O. and Tehsil Palwal, District Gurgaon—*Respondent No. 5.*
6. Hakim Chanan Ram, Relief Camp, Palwal, District Gurgaon—*Respondent No. 6.*
7. Shri Nihal Chand, s/o L. Plara Lal, Petition Writer, Gurgaon Cantt., District Gurgaon—*Respondent No. 7.*

*Re:* Election petition for challenging the return of Shri Gurdatt, s/o Lajja Ram, village Kaurali, Tehsil Ballabgarh, District Gurgaon to the Punjab State Legislative Assembly from Palwal Constituency by Ch. Sumer Singh, B.A., LL.B., Advocate, Palwal (of village Dayalpur, Tehsil Ballabgarh, District Gurgaon), a candidate for election from Palwal Constituency

to the Punjab State Legislative Assembly, and for a declaration that Shri Gurdatt was not entitled to stand as a candidate; and for a further declaration that the petitioner Ch. Sumer Singh was entitled to be declared elected to the Punjab State Legislative Assembly from Palwal Constituency.

**CORAM:**

Shamsher Bahadur, Barrister-at-Law—*Chairman*.

Chhajju Ram, B.A., LL.B., P.C.S., and

Mohindara Singh Pannun, M.A., LL.M., D.C.P., *Members of the Election Tribunal.*

**JUDGMENT**

(PER SHAMSHER BAHADUR—*Chairman*)

This is a petition of a defeated candidate Ch. Sumer Singh to challenge the election of Thakur Gurdatt from the Palwal Constituency of District Gurgaon to the Punjab Legislative Assembly. The petitioner secured 13,712 votes, while Thakur Gurdatt respondent obtained 15,787 votes. The petitioner prays for a declaration that the election of Thakur Gurdatt is void as his nomination papers were wrongly accepted. The petitioner in the event of a grant of this declaration prayed that he may be declared the elected candidate from the Palwal Constituency in place of the respondent or in the alternative respondent No. 2 Ch. Jitu who secured 3,900 votes be declared elected.

2. The grounds on which the election of the returned candidate has been impugned have been set out in paragraph VI of the petition. According to the petitioner the nomination paper of Thakur Gurdatt was improperly and illegally accepted as he held the post of a lambardar in village Morthuka, that being an office of profit under the Punjab State. The second ground on which the acceptance of the nomination paper of Thakur Gurdatt has been assailed is that he was holding an agency for distribution of seeds on behalf of the Punjab Government in village Tigaon. In the written statement filed by Thakur Gurdatt (respondent No. 1). It was denied that he held the position of a lambardar at the time of scrutiny of his nomination paper. In any event it was pleaded that the Punjab State Legislature (Prevention of Disqualification) Act VII of 1952, removed the disqualification of lambardars and protected his election to the Punjab State Assembly. As regards the second ground of attack, it was pleaded that the respondent had ceased to hold the Seed Agency at the relevant date and in any case his position as such did not provide a disqualification under the Representation of the People Act, 1951.

3. Although there were seven respondents impleaded in the petition, only the returned candidate filed his written statement. There were only three candidates in the election contest respondent No. 1 who secured the majority of votes, the petitioner who obtained the next higher number of votes, and Ch. Jitu respondent No. 2 who obtained the minimum number of votes. The other respondents withdrew their candidatures before the election.

4. The pleadings of the parties gave rise to the following issues on merits framed by the Tribunal on 25th November, 1952:—

- (1) Whether the nomination papers of respondent No. 1 Thakur Gurdatt were improperly accepted on the ground set out in paragraph VI of the petition?
- (2) If the finding is in the affirmative, whether the result of the election has been materially affected?
- (3) Whether the Punjab Act No. VII of 1952, cannot have a retrospective effect which it purports to have?
- (4) To what relief, if any, is the petitioner entitled?

5. The two controversial points covered by these issues involve determination of questions of law on which we have heard very detailed and able arguments of counsel—more especially on issue No. 3 on which we have also had the advantage of arguments from the State Advocate General. It would be convenient to deal first with the point covered by issue No. 3 and partly by issue No. 1 involving determination of the question, whether Act VII of 1952 removing the disqualification of lambardars is *ultra vires* of the Punjab Legislature. Before taking up this point it would be well to clear up the question of fact whether respondent No. 1 was a lambardar on 5th November, 1952, when the scrutiny of nomination papers of

candidates of Palwal Constituency took place. Although the respondent joined issue on this question of fact there is clear evidence to show that the assertion made by the petitioner that Thakur Gurdatt was a lambardar is correct.

6. We have on the file the order of the Collector Gurgaon (Ext. P.W. 4/4) passed on 30th May, 1949, appointing Thakur Gurdatt as a temporary lambardar of Morthuka in place of Bunda, who had migrated to Pakistan on the partition of the country. Thakur Gurdatt had applied for this post along with one Jogindar Singh, but the claims of the latter were rejected by the Collector who observed that Thakur Gurdatt held a substantial holding of land in village Kurali and was already working as a lambardar in that village to which he belongs. Thakur Gurdatt applied for the lambardarship of Morthuka vide Ext. P.W. 4/3 on 20th January, 1948. He later submitted an application Ext. P.W. 4/1 on 10th December, 1951, seeking his resignation from the lambardarship of Morthuka on the ground that he could not fulfil his duties properly. The resignation of Thakur Gurdatt was accepted by the Collector on 27th December, 1951. In fact of this documentary evidence it is pointless to urge as has been done by respondent No. 1 in his evidence that he was only a temporary lambardar of village Morthuka and never realized any land revenue from the villagers of that area. In fact there is a receipt Ext. P.W. 14/1 purporting to have been signed by Thakur Gurdatt to Zaildar Karam Singh. Though the signatures on this receipt have been denied by the respondent, we think the clear conclusion to be derived from the evidence is that he was acting as a lambardar.

7. Under Article 191 of the Constitution of India, a person is disqualified for membership of the Legislative Assembly of a State, "if he holds any office of profit under the Government of India or the Government of any State specified in the first Schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder". It has not been disputed that the post of a lambardar is an office of profit under the State. It is to be seen whether this disqualification had been removed explicitly or by implication on the relevant date, namely 5th November, 1951. Although Article 395 of the Constitution of India specifically repeals the main constitutional enactments which were in force prior to its promulgation, namely the Government of India Act, 1935 and the Indian Independence Act, 1947, it has been provided in Article 372 of this Code that "Notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India immediately before the commencement of this Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority". Under the combined operation of these provisions it is obvious that if there was any provision removing the disqualification of a lambardar at the time of scrutiny validly passed by a State Legislature it would be deemed to be good law.

8. The previous legislation on this subject thus becomes germane to the present inquiry. The language employed in Section 69(1)(a) of the Government of India Act, 1935 is identical word for word with the disabling article 191 (1)(a) of the Constitution of India to which reference has already been made. An Act passed on 23rd April, 1937, called the Punjab Legislative Assembly (Removal of Disqualification) Act II of 1937, removed *inter alia* the disqualification attached to a lambardar for being chosen as a member of the Punjab Legislative Assembly by reason only of the fact that he holds an office of profit. Thus from 1937 onwards the lambardars could contest seats in the Punjab Legislature in spite of what was contained in Section 65 of the Government of India Act. We do not doubt that the provisions of Act II of 1937 were applicable with full force at the time when the Constitution of India was introduced in the Indian Union. With a view to apply the provisions of Act II of 1937 to the Punjab Provisional Legislature, another Act was passed on 15th April, 1950, styled as the Punjab Provisional Legislature (Prevention of Disqualification) Act IV of 1950, which incorporated the removal of disqualification clause passed in the earlier Act of 1937.

9. The Constitution of India came into force on 26th January, 1950 and by virtue of Article 372 read with Article 395 of this Code the removal of disqualification of a lambardar to be chosen as a Member of the State Legislature was kept fully alive. The general elections in the State of Punjab commenced towards the end of 1951, and the nomination papers relating to the Palwal Constituency filed by different candidates were subjected to the scrutiny of the Returning Officer on 5th November, 1951. On that crucial date the respondent although a lambardar was saved by the removal of disqualification provisions embodied in Punjab Act II of 1937.

10. Some difficulty however has been introduced by a further enactment passed on 7th August, 1952 by the Legislature which met after the general elections of

1951-52 called the Punjab State Legislature (Prevention of Disqualification) Act VII of 1952. The relevant provisions of this enactment may briefly be set out:

Section (1) (2): It shall be deemed to have come into force on the 26th day of January, 1950.

(2) A person shall not be disqualified for being chosen as, and for being, a member of the Punjab State Legislature by reason only of the fact that he holds any of the following offices of profit under the Government of India or under the Government of the State of Punjab, namely:—

(a) Lambardar.

(3) The Punjab Legislative Assembly (Removal of Disqualification) Act, 1937, and the Punjab Provisional Legislature (Prevention of Disqualification) Act, 1950, are hereby repealed."

11. It has been argued on behalf of the petitioner that this Act having come into force on 26th January, 1950, i.e. before the date of scrutiny, and Acts II of 1937 and IV of 1950 having been repealed the clause relating to Removal of Disqualification ceased to exist if it is found that Section 2 of Act VII of 1952 is *ultra vires* of the Legislature. It would be wholly illegitimate for any Court to sever the provisions of a legislative enactment in the manner suggested by the counsel for the petitioner. The substantial clause in Act VII of 1952 is Section 2, and Section (1)(2) giving the legislation retrospective operation and Section 3 repealing the old provisions relating to this matter being merely incidental, must be read as a whole. In other words we cannot say that Section 2 is *ultra vires* of the Legislature while Section 3 is *intra vires*. It would be readily conceded that Section 3 was necessitated because the law as it stood at the time of promulgation of Act VII of 1952 had been embodied in Section 2 of the Act, and it was pointless to keep alive identical enactments of previous times. It may however be observed that there was no occasion for the Legislature to have repealed Punjab Act IV of 1950, which came into force on April 15th in 1950, a few months after 26th January, 1950, from which date Act VII of 1952 was to operate.

12. It is clear to us that far from introducing any innovation the Punjab Legislature which assembled after the general elections of 1952 merely reiterated the constitutional position on this matter as it had stood since 1937. The legislative history of this enactment lends great weight to the argument of the Advocate General that it was only by way of abundant caution that the legislature deemed it necessary to pass Act VII of 1952. We were informed at the Bar that the Punjab Legislature which introduced Act VII of 1952 had before it two conflicting views about the necessity of passing the impugned legislation and it was only as a matter of precaution that they thought fit to enact it. We do not agree with the proposition that all legislative enactments passed under the Government of India Act stood repealed under Article 395 of the Constitution of India. The saving clause embodied in Article 372 of the Constitution is wide enough to cover Act II of 1937.

13. We now come to deal with the contention of the petitioner's counsel that Section 2 of Act VII of 1952 should be declared *ultra vires* as it violates the fundamental right of "equality before law" enshrined in Article 14 of the Constitution of India providing that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". *Prima facie* the impugned legislation does not seek to impose any discrimination of the sort contemplated by Article 14. It purports to remove the disqualification imposed by virtue of Article 191 of the Constitution of India on *lambardars* who seek to be chosen to the State Legislature. On the face of it this Act is a beneficial enactment designed to remove a disqualification attached to all *lambardars*. It has been argued very strenuously that at the time when the nomination papers were filed, some *lambardars* did not come forward to contest the election because of the prevailing popular view that they were disqualified to do so by virtue of Article 191. It has also been brought in evidence that some *lambardars* actually refrained from filing nomination papers on this score. It has further been argued that the nomination papers of some of the *lambardars* were rejected by returning officers who took the same view about this disabling clause. It is equally true that the papers of the petitioner who is a *lambardar* were accepted by the Returning Officer. If any person decided to keep away from the election because he misconceived the legal position, or if the papers of a candidate were wrongly rejected by a Returning Officer because he misapprehended the law, it cannot be inferred that such persons have been discriminated against. If any hardship has resulted from the promulgation of the Act it may be a matter for regret, but the Court has no warrant to

declare legislation *ultra vires* on this account. It might have been more politic for the legislature to have passed Act VII of 1952 earlier than it did to enable the aggrieved lambardars to file election petitions. But this is scarcely a ground on which this enactment can be declared to be the product of an arbitrary and capricious legislature motivated by *mala fide* intentions. The plain grammatical meaning of Section 2 of Act VII of 1952 is that all lambardars in future would not be subjected to any disqualification for being chosen to the State Legislature. Lambardars in consequence of this Act would enjoy equal privilege of standing for the Legislature. It may be that on account of some mis-conception or misapprehension about the law prevailing at the time of general elections, some of the lambardars failed to avail of the privilege, which in our opinion was always open to them, but this particular hardship does not provide an adequate foothold for a Court to declare the Act to be *ultra vires*.

14. The law applicable in India is the same which is the subject matter of the equal protection clause of the Fourteenth Amendment of the Constitution of United States of America, declaring that no State shall deny to any person within its jurisdiction the equal protection of the laws. The Constitutional position has been succinctly stated by Professor Wills in a passage which has been cited with approval in many decisions of the Supreme Court more especial in *Charanjit Lal Chowdhury versus The Union of India & others* reported in A.I.R. 1951 Supreme Court page 41. The learned author in this passage says:

"The guaranty of the equal protection of the laws means the protection of equal laws. It forbids class legislation, but does not forbid classification which rests upon reasonable grounds of distinction. It does not prohibit legislation, which is limited either in the objects to which it is directed or by the territory within which it is to operate..... The inhibition of the amendment .. was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation. It does not take from the States the power to classify either in the adoption of police laws, or tax laws, or eminent domain laws, but permits to them the exercise of a wide scope of discretion, and nullifies what they do only when it is without any reasonable basis. Mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If any state of facts can reasonably be conceived to sustain a classification, the existence of that state of facts must be assumed. One who assails a classification must carry the burden of showing that it does not rest upon any reasonable basis". Page 379 1st Edition of Constitutional Law by Professor Wills.

15. In the words of Mr. Justice Fazl Ali in *Charanjit Lal Chowdhury versus the Union of India & others* at page 45, the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. We make no effort to justify the delay which was occasioned in enacting of the impugned legislation. But it must be borne in mind that the Bill has been on the legislative anvil for a long time and there is no material for us to hold that discrimination was intended or designed. The Act treats alike all lambardars who in future are going to seek elections and it further protects all the lambardars who have been elected to the present legislature. The classification, if any, is perfectly reasonable and in any view of the matter the legislation cannot be regarded as discriminatory. While enunciating the principles which govern such cases Hon'ble Mr. Justice Fazl Ali in *State of Bombay & another versus F. N. Balsara* 1951 Supreme Court page 318 observed on page 326 that "if a law deals equally with members of a well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons". It may be that the enabling provision of Section 2 of Act VII of 1952, cannot benefit owing to efflux of time those lambardars who failed to file their nomination papers or whose papers were rejected by the returning officer. But such a hardship is incidental to such legislation and cannot be redressed.

16. The validity of Act VII of 1952, has lastly been challenged on the ground that it renders nugatory the statutory provision de-barring a lambardar from giving an assistance to a candidate in his election. Under Section 123(8) of the Representation of People Act, 1951, it has been declared a major corrupt practice to obtain or procure or abet or attempt to obtain or procure "by a candidate or his agent ..... any assistance for the furtherance of the prospects of the candidate election from any person serving under the Government of India or the Government of any State other than the giving of vote by such person." In clause (b) of the

explanation to 123 (8) It is declared that "a person serving under the Government of any State shall include a patwari, Chaukidar... village headman or any other village officer, by whatever name he is called,... but shall not include any person (*other than any such village officer as aforesaid*) who has been declared by the State Government to be a person to whom the provisions of this clause shall not apply."

17. It is rightly contended that the bar imposed on the village headman, which a lambardar admittedly is, being absolute is incapable of being relaxed by the State Legislature. It has to be conceded on the plain meaning of the words of the explanation that in no circumstances can a State Legislature remove or relax the interdict placed on a village headman as far as assistance for the furtherance of the election prospects of a candidate is concerned. It is sought to be argued by way of inference that when a lambardar is forbidden by statute to render assistance to a candidate, how can he set himself as a candidate for the election? The argument is not unattractive but on reflection we find that it is unsustainable. It is not for Courts to introduce popular notions in the determination of questions relating to the propriety and validity of legislative enactments. It may appear at first sight that a lambardar seeking election for himself must of necessity render assistance in furtherance of his own election prospects, but it is also possible that he may decide to remain inactive during the election campaign. A disabling provision has to be construed strictly and its ambit must not be enlarged unless the context of the enactment compels us to do so. Section 123(8) only prohibits a lambardar from rendering assistance to a third person and it appears to us that the mischief which the Legislature designed to prevent was the powerful and pervading influence of a village headman to be exercised for political purposes. The matter assumes a different complexion altogether when the Legislature in its wisdom thinks it fit to permit village headmen to seek election to the State Legislature.

18. The position is undoubtedly anomalous and has been recognized as such. The Representation of the People (Amendment) Bill, 1953, is at present on the legislative anvil and from a draft copy supplied to us containing the statement and its object and reasons by the Law Minister Hon'ble C. C. Biswas, it appears that explanation to Section 123(8) of the Representation of the People Act 1951 will be amended so that "village officers only who actually stand for election are not hit by the prohibition." According to the Law Minister (Para. 17 of the Draft Bill) "it is possible for a lambardar in Punjab to stand for an election but it is a major corrupt practice for any candidate to obtain the assistance of any lambardar." Be it noted that the Constitutional right of the State Legislature to pass an enactment like Act VII of 1952 was never seriously questioned and the amendment is only designed to bring into line Section 123(8) with Act VII of 1952.

19. A word may be said about the retrospective effect which has been given to the impugned enactment. A legislature can always make its enactment retrospective in its operation and if it does not offend any principles of constitutional propriety, courts should give effect to the clear intention of the legislature. From a discussion of the questions involved in this case, we hold that Act VII of 1952 is *intra-vires* of the Punjab State Legislation. From whatever aspect this case is considered we must hold that the nomination papers of Thakar Gurdatt were validly accepted, as far as his status as a Lambardar was concerned.

#### Issues Nos. 1 and 2—

20. The second challenge which has been offered to the nomination papers of Thakar Gurdatt is covered by issues No. 1 and 2. Here again we might clear the ground regarding the factual position before taking up a discussion of the legal controversy involved in these issues. It was on 15th October, 1941, that Thakar Gurdatt applied for appointment as an agent to the Agricultural Department for the supply of seeds in village Tigaon. This application is Exhibit P.W.2/1. The appointment of Thakar Gurdatt as Departmental commission agent was approved by the Agricultural Department on 7th November, 1941 (Ext. P.W.2/2). Thereafter an agreement was executed by Thakar Gurdatt as a commission agent and the requisite deposit of Rs. 200 was made by him. An agreement was executed on 22nd January, 1942, between Thakar Gurdatt on the one hand and the Punjab Government on the other about the contract of Agency relating to the supply of seeds. The respondent worked as a commission agent till 22nd May, 1952, when his resignation was accepted. The resignation was actually submitted by the respondent on 11th December, 1951 (Ext. P.W.2/7). It is clear from this evidence that the respondent acted as an agent for the supply of Government seeds at the time when his nomination papers came for scrutiny before the returning officer.

Under Section 7 clause (d) of the Representation of People Act, "a person is disqualified for membership of a State Legislature if whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government." In order to accept the contention of the petitioner that the respondent was disqualified from standing as a candidate for the State Legislature, it must be established that (1) the respondent had a share or interest in a contract, (2) for the performance of any services undertaken by the Government. The questions for determination therefore are (1) Whether there was any subsisting contract between the respondent No. 1 and the Government and (2) whether such a contract was executed for the performance of any services undertaken by the Government.

21. It is not denied by the respondent that he worked as a commission agent for the supply of seeds. It has, however, been contended on his behalf that the agreement Ext. P.W.2/3 must be regarded as a licence and cannot be given the legal status of a contract. It has further been urged on his behalf that even if the terms of the agreement could be construed as a contract of agency, it was not a work which was undertaken by the Government for the performance of the service to the community. The petitioner on the other hand has strongly relied on the terms of the contract itself—more especially to the provisions relating to the payment of commission to the respondent—to show that the agreement between him and the Government could but be regarded as a contract and nothing else, and further that the supply of seeds had been undertaken by the Government not by way of any concession, but as a service rendered for the welfare of the village community.

22. It becomes necessary to examine the terms of the contract (agreement Ext. P.W. 2/3) in detail. This is an agreement executed by respondent No. 1 on the one hand who is the commission agent, and the Governor of the Punjab on the other. The agreement was executed for the sale of Government seeds through the agency of the commission agent. The agreement was to commence from 1st January, 1942, and was to continue in operation till it was rescinded. The Government seeds were to be sold within the precincts of village Tigaon. The Commission agent was enjoined to keep regular accounts of sales to persons who were to be granted permits to obtain such supplies from the commission agent. The commission agent was not to hand over the agency to anyone else without the written permission of the Agricultural Officer. The commission agent was to receive a commission on the sale at the rate of annas 2 per maund for wheat seeds and annas 3 per maund for cotton seeds. Subsequently rates of commission on other seeds were also fixed.

23. From the evidence of the Government servants adduced on behalf of the petitioner it is clear that the Government made no profits out of the sale of seeds sold through the agency of the commission agents. Chaman Lal P.W. 2 Seed Depot Clerk of the Deputy Director of Agriculture described the whole machinery as "no profit scheme." According to S. Gurbachan Singh, District Food Controller, Gurgaon, P.W. 1, stocks of seeds were delivered to the Commission agent who was required to make payment of the price in advance. The commission agent reimbursed himself by charging the price from the purchaser. This witness has also stated that the respondent supplied about 975 maunds of seeds and was paid an aggregate commission of Rs. 684/14/-.

24. In our view the agreement between the Government and the Commission agent could be construed only as a contract of agency. In consideration of the commission the respondent had undertaken to sell the supply of seeds to authorised persons who were granted permits to buy. To say that such a relationship constituted a mere license would be wholly wrong. The respondent who has always been described as a commission agent in the agreement bound himself to certain conditions with regard to the sale of seeds and the maintenance of accounts. The Government on the other hand became liable for payment of the commission to the respondent. That such commission was actually paid to the respondent is not a matter which admits of any doubt.

25. The respondent has taken up the position that it was Roshan Lal R.W. 7 who was really working as a commission agent for the sale of seeds. Roshan Lal stated that he supplied seeds to persons who had received permits from the office of District Food Controller, and the price on which the seeds were supplied was specified in the permits. The commission charges and other incidental expenses were added by the District Food Controller and became payable to the commission agent. It has been emphasized by Roshan Lal in his evidence that he could

supply the seeds only to those persons who brought permits from the District Agriculture Office and he had no option to make the supplies to other persons. Roshan Lal has further stated that he was the *de-facto* owner of the business of seed agency, though it was run in the name of Thakur Gurdatt. He has stated that Thakur Gurdatt was paid nothing towards commission. He has also tried to belittle the profits made on the transactions by way of commission charges. On his own showing Roshan Lal worked in association with Thakur Gurdatt till the end of 1951. No written agreement was produced to show that Roshan Lal alone was entitled to the commission and nothing was payable to Thakur Gurdatt. Thakur Gurdatt as R.W. 43 admitted that he used to sell Government seeds, but asserted that very little commission was earned by him. This matter is wholly besides the point. Thakur Gurdatt cannot be heard to say that it was Roshan Lal who was carrying on the business. By terms of the agreement the commission agent was to carry on the work of the supply of seeds personally and could not entrust it to anyone else. The evidence of Roshan Lal and Thakur Gurdatt to the effect that the commission agency work was done by Roshan Lal, who alone was paid the commission is not admissible as it varies the terms of a written contract. In our view it is clear beyond any doubt that the agreement embodied in Ext. P.W. 2/3 is a contract between the Government and respondent Thakur Gurdatt in which the latter had an interest. It is also indisputable that the contract was for the supply of seeds on behalf of the Government. We do not see any force in the argument of Shri Chuni Lal Sawhney, the learned counsel for the first respondent, that the agreement is not a contract, but is only a licence imposing duties and obligations on the first respondent. By the terms of Ext. P.W. 2/3 the respondent bound himself to sell Government seeds on certain terms and conditions most of which were imposed in the interests of consumers as the Government was anxious to insure the quality and purity of the seeds supplied to them, but the obligations taken over by respondent No. 1 were not without consideration. The Commission agent was entitled to charge a commission on the sales. There was in our opinion a mutuality of obligations and the agreement is supported by consideration. The respondent No. 1 obtained the valuable advantage of supplying Government seeds of good quality to such purchasers as had been selected by the Government officers. The agreement with which we are concerned is distinguishable from a licence which has the characteristic of absence of mutuality and one sided nature of the obligation imposed. If respondent No. 1 continued to abide by the conditions laid down in the contract, he could carry on with the work of agency and this again was a valuable consideration. Whether consideration was adequate or not, it is not a matter which is relevant to the determination of the question whether a contract existed or not. The principles of the present case are not dissimilar to those which influenced the Election Tribunal of Vellore in coming to a similar conclusion in Election Petition 109 of 1952. *Dr. Kannabiran petitioner Versus Shri A. J. Arunachalam etc.* (1). In that case some yarn was handed over by the Central Government to the various States for distribution amongst the consumers. The quotas of yarn distributed to the various States were fixed by the Textile Commissioner at Bombay. The State Government of Madras through its Director of Controlled Commodities was in charge of the yarn to be distributed amongst the consumers in the Madras State. For this purpose the State Government selected four nominees from amongst the licensed dealers and their main function was to distribute the commodity amongst the different dealers in their areas. For this service some commission was allowed to the selected nominees. The State officer was to furnish to the nominee the list of persons to whom yarn had to be distributed and it was only in cases of failure to furnish such a list that the nominee was free to distribute the yarn as he pleased amongst the licensed dealers. The frame work of this machinery was hedged by restrictions and impositions placed on the nominee, but all the same it was held by the Tribunal that the agreement between the nominee and the State Government constituted a valid contract for the performance of a service undertaken by the Government. The facts of the present case are to be distinguished from those in the *Kandaghat Election Petition No. 4 of 1952(2)*, decided by the Election Tribunal of Patiala. This case has been strongly relied upon by the counsel for the petitioner. The gentleman whose papers were held to have been validly accepted by the Tribunal was holding a foodgrains Depot in Sanawar. The opinion of the Tribunal such a relationship was not of a contractual nature and could not be hit by the mischief of Section 7(d) of the Representation of People Act. With the *ratio decidendi* of this authority we are in complete agreement, but the facts of the present case are different in all essential details from the *Kandaghat* case.

26. It remains to be seen whether the contract was by way of performances of a service undertaken on behalf of the Government. We have already referred to the evidence of P.W. 2 who has deposed that the Government was selling the



seeds without making any profits on these transactions. The dominant idea was that the village community ought to be supplied good quality of seeds through Government agent. From the obligations imposed on the commission agent in the agreement Ext. P.W. 2/3 it is clear that the Government's interest was to supply good quality seeds to such persons who were issued permits. Our attention has also been drawn to the East Punjab Improved Seeds and Seedlings Act, 1949, by virtue of which it was obligatory upon the cultivators to obtain their supply of seeds from the Government Agent. This legislation was passed presumably with the object of promoting the growth of crops of a high quality.

27. It has been contended by the learned counsel for the first respondent that even if the agreement between his client and the Government could be regarded as a contract, it was not towards performances of a service undertaken by the Government. We do not agree with his contention that the word "undertaken" connotes a statutory or enforceable obligation on the part of the Government. As held by Mr. Justice McCardie, in *Leck Versus Epsom Rural District Council* (1922 I.K.B. 383) "By the word 'undertook I understand that they either expressly resolved to do the thing mentioned in the section or in practice so acted as to show that they had resolved to do it.' The Government was of course under no obligation to supply what it considered to be good quality seeds to the village community of Tigaon. It is, however well to observe that according to the evidence of the officials of the Government Department the entire scheme for the supply of seeds was primarily for the benefit of the consumers without any intention of making profits. With the growth of civilization the modern State has acquired larger and greater powers in the control of activities which have for a long time been regarded as objects of private enterprise. Apart from disclaiming his interest and liability in the seed agency agreement the first respondent had made no attempt to deny that the Government entered into the contract with him with the object of performing a service to the community. All that the respondent's witnesses have stated on this aspect of the case is that the villagers did not think much of the quality of seeds supplied by the Government agent. Many of them have deposed that they never cared to obtain their supplies of seeds from the Government as these were of a poor quality. They have however added a rider that they preferred to use the seeds which they raised themselves and never acquired their stocks from the open market. The petitioner's evidence on the other hand consists of witnesses who have stated that the seeds supplied by the commission agent of Tigaon were of good quality and there was generally a great desire on the part of the village cultivators to obtain supplies from the Government agency.

28. In a case which came up before the Election Tribunal of Tanjore in Election Petition No. 58 of 1952, *Sankara Pandia Nadar Versus Ramaswami etc.* (3) the question arose whether the whole-sale business in foodgrains and groceries carried in the interests of the returned candidate under contracts entered with the Government were hit by the bar imposed under Section 7(d) of the Representation of the People Act. In one of these contracts the respondent had agreed to hold the reserve grain stock of the Madras Government and then dispose of the same according to the directions of the Government subject to such terms and conditions as were set out in the agreement. It was held by the Tribunal that the Government having assumed powers with regard to the production, supply and transport of foodgrains, the contracts in question must be regarded in furtherance of service undertaken by the Government. The same view was adopted by the Election Tribunal of Ludhiana in Election Petition No. 137 of 1952 (4) where it was held that the papers of one of the respondents were rightly rejected by the returning officer because of a contract with the Punjab Government in which he had an interest and that that contract being for performance of service undertaken by the Government to promote the equitable distribution of foodgrains amongst the consumers.

29. From a review of the authorities and the evidence of the parties we are definitely of the view that the sole emphasis on the contract in dispute was to supply good quality seeds to as many consumers around village Tigaon as possible. The *raison d'être* of the contract undoubtedly was to render a service which the Government considered it its duty to perform. That being our conclusion, the respondent was clearly disqualified to be chosen as a candidate and his nomination paper ought to have been rejected by the returning officer. It was argued by the learned counsel for the first respondent that even if this were so, the result of the election cannot be said to have been materially affected. This appears to us to be an amazing proposition. If it is held as we feel bound to hold that the nomination paper of the first respondent was wrongly accepted—what other conclusion is possible but that the result of the election has been materially affected? If the respondent had been out of the field from the election contest as in our view he

should have been, any other person but him would have been returned. The real question to be determined is whether the election of the respondent has been materially affected, and not whether the petitioner had any chance of being returned. Under Section 100 (1) (c) the Tribunal is bound to declare the election wholly void if in its opinion the result of the election has been materially affected by the improper acceptance of any nomination. On the finding that the acceptance of the nomination paper of Thakur Gurdatt was improper, this election has to be set aside and we make an order accordingly. As the case has been decided on debatable questions of law, we do not propose to burden the parties with costs. We, however, make an assessment of costs of the Advocate General at Rs. 350.

Announced

The 17th June 1953.

(Sd.) SHAMSHER BAHADUR, Chairman.

I agree.

The 17th June 1953.

(Sd.) MOHINDRA SINGH PANNUN, Member.

I agree.

The 17th June 1953.

(Sd.) CHHAJU RAM, Member.

- (1) Before the Election Tribunal, Vallore, Election Petition No. 109 of 1952, published in Part I, Section 1, in the *Gazette of India Extraordinary* of December 17, 1952, page 961.
- (2) Before the Election Tribunal, Patiala, Election Petition No. 4 of 1952, published in Part I, Section 1, in the *Gazette of India Extraordinary* of December 6, 1952, at page 2539.
- (3) Before the Election Tribunal, Tanjore, Election Petition No. 58 of 1952, published in Part II, Section 3, in the *Gazette of India Extraordinary* of April 23, 1953, at page 1431.
- (4) Before the Election Tribunal, Ludhiana, Election Petition No. 137 of 1952, published in Part II, Section 3, in the *Gazette of India Extraordinary*, of April 17, 1953 at page 1129.

[No. 19/89/52-Elec.III/10177.]

**S.R.O. 1345.**—Whereas the election of Shri Harbhajan Singh and Shri Kartar Singh, as members of the Legislative Assembly of the State of Punjab from the Garhshankar constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Bhag Singh, S/o Sardar Sundar Singh, Village Makhsuspur, P.O. Kot Fatuhi, Tehsil Garhshankar, District Hoshiarpur:

And whereas, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

#### IN THE COURT OF ELECTION TRIBUNAL, JULLUNDUR.

ELECTION PETITION No. 236 of 1952

Bhag Singh son of S. Sundar Singh of village Makhsuspur, P.O. Kot Fatuhi, Tehsil Garhshankar, Distt. Hoshiarpur—*Petitioner*.

#### *Versus*

1. Harbhajan Singh son of Natha Singh, V. Mahilpur, District Hoshiarpur.
2. Kartar Singh son of Gurdas Singh, V. & P.O. Langeri, District Hoshiarpur.
3. Bakshish Singh s/o Hazura Singh, V. & P.O. Kharar Achharwal, District Hoshiarpur.
4. Bahadar Sain s/o Dasundhi Ram of V. & P.O. Panjaur, District Hoshiarpur.
5. Chanan Ram s/o Naman Ram of Nangal Khurd, P.O. Barian Kalan, Hoshiarpur.
6. Daljit Singh s/o Suba Singh of V. Garhshankar, Distt. Hoshiarpur.
7. Dogar Singh s/o Bhagat Ram, V. & P. O. Tuto Mazara, Distt. Hoshiarpur.
8. Ram Lal s/o Kheru Ram, V. & P.O. Mugowal, District Hoshiarpur.
9. Sada Ram s/o Deva, V. Barian Khurd, P.O. Barian Kalan, Distt. Hoshiarpur.
10. Surjeet Singh s/o Ram Dass, V. Basiala, P.O. Garhshankar, Distt. Hoshiarpur.
11. Sohan Singh s/o Sundar Singh, Kucha Moran Kambo, Amritsar.
12. Sewa Dass Chela Puran Dass, V. Kalewal Bhagtan, P.O. Basi Kalan, Distt. Hoshiarpur.

13. Kalwaran Singh s/o Kundan Singh, V. & P.O. Baddon, Distt. Hoshiarpur.
14. Kalyan Singh s/o Harbans Singh, V.P.O. Mahngarwal, Distt. Hoshiarpur.
15. Lambar Singh s/o Banta Singh V. Kaharpur, P.O. Rampur Jhanjowal, Distt. Hoshiarpur.
16. Mangoo Ram s/o Harnam Dass, V.P.O. Mugewal, Distt. Hoshiarpur.
17. Moola Singh s/o Kaka, V. & P.O. Balachor, Distt. Hoshiarpur.
18. Narindar Singh s/o Gurbachan Singh V. & P.O. Padi Surasingh Distt. Hoshiarpur.
19. Wattan Chand s/o Sant Ram, Nai Abadi Garhshankar, Distt. Hoshiarpur.
20. Gulbarg Singh s/o Balwant Singh, V. & P.O. Mahilpur, Distt. Hoshiarpur.
21. Kartar Singh s/o Ram Kishan, V. Achharwal, P.O. Kharar, Distt. Hoshiarpur.
22. Amar Nath s/o Thakar Dass, V. & P.O. Barian Kalan, Distt. Hoshiarpur.
23. Rakha Ram s/o Ranju Mal, V. Garhshankar, Distt. Hoshiarpur.
24. Mohindar Gopal Singh s/o Thakar Singh, V.P.O. Chabewal, Distt. Hoshiarpur.
25. Beant Singh s/o Achhar Singh. Clock Tower Hoshiarpur.
26. Charan Singh s/o Harnam Singh, Chah Khara, Hoshiarpur.
27. Amar Singh son of Partap Singh, Railway Mandi, Hoshiarpur.
28. Ishar Singh son of Roda Singh, V. Kukran, P.O. Pakhowla, Distt. Hoshiarpur.
29. Sundarshan Dass s/o Sundar Dass, Suteri, Hoshiarpur—*Respondents*.

Election Petition to call in question Election to the Legislative Assembly, Punjab State, from the Garhshankar (two members) Constituency from Hoshiarpur District, Punjab, held in January and February, 1952.

Prayer:—That the election be declared wholly void that election of the Returned candidate Respondent is void.

#### CORAM:

Shamsher Bahadur, Barrister-at-law, *Chairman*.

Chhaju Ram, B.A., LL.B., P.C.S., and

Mohindara Singh Pannun, M.A. LL.M., D.C.P., *Members of the Election Tribunal*,

#### ORDER

(PER SHANESHER BAHADUR—*Chairman*)

The petitioner Shri Bhag Singh has challenged the election of the first respondent S. Harbhajan Singh, who has been returned to the Punjab Legislative Assembly from the Garhshankar double member Constituency. The second returned candidate is S. Kartar Singh respondent No. 2 whose election has not been challenged. The remaining 27 respondents in this petition did not come forward to take any part in the proceedings.

The election of the first respondent has been challenged on the ground that he was a lambardar at the relevant time when his nomination paper was filed. It was also alleged that the election of the first respondent was void on account of the fact that assistance was procured from Shri Raghbir Singh, Sub-Inspector Police Station Mahalpur, S. Amar Singh lambardar of village Bharta, and that undue influence was exercised by the first respondent who was Principal of Guru Gobind Singh Khalsa College, Mahalpur, on the parents of the students under his charge. There was lastly an assertion that certain provisions of the Constitution of India and the Representation of the People Act had not been complied with in the construction of ballot boxes and the counting of votes. These pleas have been traversed by the first respondent and the following six issues were framed on merits by the Tribunal on 21st February, 1953:—

1. Was the resignation of respondent No. 1 as a lambardar accepted before the date of scrutiny? if so, how does it affect?
2. Has the result of election been materially affected by the improper acceptance of the nomination paper of respondent No. 1 S. Harbhajan Singh?
3. Has the result of election been materially affected by the improper acceptance of the nomination paper of respondent No. 16 S. Narindar Singh?

4. Is the election of respondent No. 1 void for the reasons given in para. No. 6 clauses (a) to (c) of the petition and Schedules A to C excepting the part of the Schedule B struck off, vide our order dated 10th January, 1953?
5. Is the election of respondent Nos. 1 and 2 void for the reasons given in para. No. 7 clauses (a) to (c) of the petition?
6. What relief, if any, is the petitioner entitled to?

Although evidence has been adduced on issue No. 4, it was never pressed at the time of arguments and nothing need be said on this matter. The petitioner's counsel made a statement on 21st April, 1953, when his evidence was being recorded that he did not wish to press issue No. 5. We are, therefore, left to deal with the question whether the nomination paper of the first respondent was improperly accepted, and if so, whether the result of the election had been materially affected Issue No. 3 being identical with the second, there is no need to give a separate decision on this point. The counsel for the first respondent admitted that his client was a Lambardar when his nomination paper was filed.

The point for consideration on the second issue briefly is, whether respondent No. 1 suffered from disqualification under Article 191 of the Constitution of India at the time when his nomination paper was filed before the returning officer. An identical question arose in the Election Petition No. 89 of 1952, Ch. Sumar Singh Versus Thakur Gurdatt & others of Palwal Constituency, which this Tribunal has disposed of to-day. The Tribunal has held that Punjab Legislative Assembly (Removal of Disqualification) Act II of 1937 passed by the Punjab Legislature on 23rd April, 1937, removed the disqualification of lambardar and this enactment subsisted at the time when the Constitution of India came into force by virtue of Articles 372 and 395 of the Constitution. It has further been held by the Tribunal that Punjab State Legislature (Prevention of Disqualification) Act VII of 1952, passed by the Legislature of Punjab after the general elections of 1952 is intra vires of the Legislature, and this Act having removed the disqualification of a lambardar for being chosen as a member of the State Legislature, the first respondent did not suffer from any disqualification and his papers were rightly accepted by the returning Officer. The detailed reasons for the conclusions of the Tribunal are given in the Judgment delivered this day, in Election Petition 89 of 52 and they need not be repeated in this order.

No other point has been raised and we would accordingly uphold the election of the returned candidate. The petition fails and is dismissed.

As the question for determination involved a debatable question of law, we do not levy any costs on the parties. The fees of the Government Pleader who assisted the Tribunal on behalf of the State Advocate General is assessed at Rs. 250.

Announced.

The 17th June 1953.

(Sd.) SHAMSHER BAHADUR, *Chairman.*

I agree.

The 17th June 1953.

(Sd.) CHHAJU RAM, *Member.*

I agree.

The 17th June 1953.

(Sd.) MOHINDER SINGH PANNUN,

[No. 19/89/52-Elec. III/10177.]

By order.

P. R. KRISHNAMURTHY, *Asstt Secy.*